

**UNITED STATES DISTRICT COURT
NEVADA DISTRICT COURT
LAS VEGAS DIVISION**

HUGO RIQUELME,
Plaintiffs,
v.
CAPITAL ONE BANK (USA), N.A.,
Defendant.) Case No.:
)
) Complaint for Unlawful
) Debt Collection Practices
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COMPLAINT

NOW COMES Plaintiff, HUGO RIQUELME (“Plaintiff”), through his attorney, and hereby alleges the following against Defendant, CAPITAL ONE BANK (USA), N.A. (“Defendant”):

INTRODUCTION

1. Plaintiff brings this action on behalf of himself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter "TCPA"), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Defendant conducts business in the state of Nevada and therefore personal jurisdiction is established.
 3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See, Mims v. Arrow Financial Services, LLC, 565 U.S. 368 (2012), holding that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.

4. Venue is proper in the United States District Court for the District of Nevada pursuant to 28 U.S.C § 1391(b)(2) because Plaintiff resides within this District and a substantial part of the events or omissions giving rise to the herein claims occurred, or a substantial part of property that is the subject of the action is situated within this District.

PARTIES

5. Plaintiff is a natural person residing in Clark County, in the city of Las Vegas, Nevada and is otherwise *sui juris*.

6. Defendant is a Virginia Corporation doing business in the State of Nevada with its principal place of business located in McLean, Virginia.

7. At all times relevant to this Complaint, Defendant has acted through its agents, employees, officers, members, directors, heir, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.

FACTUAL ALLEGATIONS

8. Defendant is a “person” as defined by 47 U.S.C. § 153 (39).

9. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged debts owed by Plaintiff.

10. Defendant placed collection calls to Plaintiff's cellular telephone at phone number (702) 624-38XX.

11. Defendant places collection calls to Plaintiff from phone numbers including, but not limited to, (800) 955-6600.

12. Per its prior business practices, Defendant's calls were placed with an automated telephone dialing system ("auto-dialer")

- 1 13. Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C.
2 §227(a)(1) to place its telephone calls to Plaintiff seeking to collect a consumer debt
3 allegedly owed by Plaintiff, HUGO RIQUELME.
- 4 14. Defendant’s calls constituted calls that were not for emergency purposes as defined by 47
5 U.S.C. §227(b)(1)(A).
- 6 15. Defendant’s calls were placed to a telephone number assigned to a cellular telephone
7 service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
8 227(b)(1).
- 9 16. Defendant never received Plaintiff’s “prior express consent” to receive calls using an
10 automatic telephone dialing system or an artificial prerecorded voice on his cellular
11 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).
- 12 17. On December 14, 2017, at or around 9:28 a.m. Pacific Standard Time, Plaintiff spoke with
13 Defendant’s female representative at phone number (800) 955-6600 and requested that
14 Defendant cease calling Plaintiff’s cellular phone.
- 16 18. During the conversation, Plaintiff gave Defendant his name, social security number, date
17 of birth, address, and telephone number to assist Defendant in accessing his accounts
18 before asking Defendant to stop calling his cell phone regarding all of his accounts.
- 19 19. Plaintiff revoked any consent, explicit, implied, or otherwise, to call his cellular telephone
20 and/or to receive Defendant’s calls using an automatic telephone dialing system in his
21 conversation with Defendant’s representative December 14, 2017.
- 22 20. Despite Plaintiff’s request to cease, Defendant continued to place collection calls to
23 Plaintiff through May 5, 2018.
- 24
- 25

29. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, HUGO RIQUELME, respectfully requests judgment be entered against Defendant, CAPITAL ONE BANK (U.S.A.), N.A., for the following:

FIRST CAUSE OF ACTION

30. For statutory damages of \$500.00 multiplied by the number of negligent violations of the TCPA alleged herein (93); \$46,500.00;
 31. Actual damages and compensatory damages according to proof at time of trial;

SECOND CAUSE OF ACTION

32. For statutory damages of \$1,500.00 multiplied by the number of knowing and/or willful violations of TCPA alleged herein (93); 139,500.00;
 33. Actual damages and compensatory damages according to proof at time of trial;

ON ALL CAUSES OF ACTION

34. Litigation costs and reasonable attorneys' fees;
 35. Any other relief that this Honorable Court deems appropriate.

JURY TRIAL DEMAND

36. Plaintiff demands a jury trial on all issues so triable.

RESPECTFULLY SUBMITTED,

Dated: October 31, 2018

By:/s/ Mathew Higbee
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